

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter Of

Review of the Pioneer's
Preference Rules

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) ET Docket No. 93-266
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MOTION TO ACCEPT LATE FILE COMMENTS

By this Motion, Ameritech seeks leave to file the attached Comments in this matter one day late. Due to unavoidable problems in transmitting the pleading, Ameritech's Comments were not received for filing until after the Commission's offices had closed for the day on Monday, November 15, 1993.

Since the time for filing of Reply Comments in this matter remains open until November 22, and since the proffered Comments are of a relatively limited scope, no party's interest will be adversely affected by the Commission's acceptance of the Comments.

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Therefore, Ameritech asks that its Comments be accepted and given full consideration as filed herewith.

Respectfully submitted,

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Dated: November 16, 1993

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COMMENTS OF AMERITECH

Ameritech respectfully offers these Comments regarding the Notice of Proposed Rule Making adopted October 21, 1993 ("NPRM") in this matter. Implementation of the Commission's Pioneer Preference concept has resulted in substantial industry efforts and innovation. Discontinuing use of the concept or retroactively canceling previous preference awards would be counterproductive to achieving the Commission's objectives.

I. RESULTS OF THE PREFERENCE PROCESS HAVE BEEN SIGNIFICANT

The Commission should carefully assess the results of implementing its Pioneer Preference rules before deciding to discontinue their use or revoke earlier awards. In cases in which the preference rules have been applied, the level of innovation and creativity has been remarkable.

In the case of Low Earth Orbit satellite services, for example, several innovative approaches were submitted in hopes of receiving a preference, and the service offers great promise of bringing advanced communications services to countries which would otherwise be left out of the information age.¹ In the case of narrowband (900 MHz) PCS, the industry responded with several creative proposals

¹Report and Order, ET Docket No. 91-280, 8 FCC Rcd. 1812 (1992).

to offer capabilities beyond those previously envisioned as mere "advanced paging" services.²

In light of this record of innovation, it is ironic that for broadband (2 GHz) PCS, a service for which over 240 experimental licenses were granted, and over 50 applications for preferences were filed, the Commission now proposes to reverse its field and retroactively eliminate the benefits of the preference concept.

II. DISCONTINUING THE PCS PREFERENCE PROCESS WOULD HAVE A CHILLING EFFECT UPON FURTHER INNOVATION

In light of this record of stimulating technical creativity, it is clear that revoking awards through retroactive cancellation of the process would have a chilling effect reaching far beyond the specific services involved. The potential future damage to be caused by such a step is difficult to estimate.

As the Commission noted in considering whether to implement a preference of any form, lack of resources to develop a sound, innovative idea and bring it to a state of commercial viability can effectively foreclose an innovator from competing³. The profit motive is key to securing funding in today's competitive marketplace. To retroactively cancel the process in the case of broadband PCS would cast a shadow of doubt over the value of any future awards.

III. A "BIDDING CREDIT" WOULD NOT FULFILL THE INTENT OF THE RULES

The Commission proposes in the NPRM that, instead of receiving a preference, innovators might qualify for a bidding credit in future spectrum auctions.⁴ Such an arrangement would not fulfill the original intent of the preference Rules. An innovator's ability to raise funds to bring a technical idea from conception to reality would not likely be enhanced by the mere possibility of a

²First Report and Order, GEN Docket No. 90-314 and ET Docket No. 92-100, 8 FCC Rcd. 7162 (1993).

³Report and Order, GEN Docket No. 90-217, 6 FCC Rcd. 3488 (1991).

⁴NPRM, at p. 6 (para. 12).

bidding credit, when receipt of the credit would be dependent upon winning an auction in the first place.

In view of the competitive potential of broadband PCS, the financial hurdle confronted by an innovator is likely to be significantly higher than in any case thus far. Because of the integrated nature of the emerging wireless services marketplace, the auctions for PCS spectrum will likely attract bidders who attach a strategic value to the spectrum that will force its price above that of a "stand-alone" commercial mobile service. This would raise even further the market entry barrier faced by innovators.

IV. THE SCOPE OF THE PREFERENCE RULES SHOULD BE BROADENED

Rather than revoke its promised PCS preferences, the Commission would do well to broaden its view of the level and type of innovation required to qualify for a preference. Ameritech continues to believe that its PCS architecture⁵ (upon which a U.S. patent application was based, and for which Ameritech has received a notice of allowance from the Patent & Trademark Office, and expects Letters Patent to issue in the near future) demonstrates a level of innovation sufficient to pass the standards set out in the preference rules. Other applications may qualify as well.

In addition to granting additional preferences, the FCC should consider awarding preferences based upon a scheme which recognizes gradations of innovative effort. Such an approach would recognize the relative worth of each applicant's contribution to the technical art or service involved. Each grantee's award could be tied, in relative spectrum amount and geography, to the value of its efforts to the technology or service as finally implemented. This approach would be preferable to the "all or nothing" method employed by the Commission. It would

⁵Request of Ameritech for Pioneer's Preference, GEN Docket No. 90-314 (PP-45), tentatively denied in Tentative Decision and Memorandum Opinion and Order, GEN Docket No. 90-314, Adopted November 6, 1992.

permit recognition of the obvious broad variations among the contributions of awardees.

V. CONCLUSION

Before discontinuing its Pioneer's Preference process, the Commission should carefully consider the significant impact this step could have on future technological and service innovation. The preference concept has demonstrated substantial merit in its relatively short life, and should be broadened rather than abandoned.

Respectfully submitted,

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